

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATHAN R. HOYE,	)	
	)	
Plaintiff,	)	2:18-CV-01013
	)	
vs.	)	Judge Nora Barry Fischer
	)	
RISPERDAL DRUG LAWSUIT SOURCE,	)	
DR. KAREN KHADAZDA,	)	
	)	
Defendants.	)	

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NATHAN HOYE,	)	
	)	
Plaintiff,	)	2:18-CV-01255
	)	
vs.	)	Judge Nora Barry Fischer
	)	
RISPERDAL MANUFACTURER, DR.	)	
KAREN KHADAZDA,	)	
	)	
Defendants.	)	

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**MEMORANDUM ORDER**

The above two cases were referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72. In both cases, Plaintiff, Nathan Hoye, alleges that he was diagnosed with gynecomastia as a result of being prescribed Risperdal from May 2, 2013, until May 7, 2015, during his previous incarceration at the Allegheny County Jail. He claims his Eighth Amendment rights were violated when he was prescribed “this dangerous drug.”

On October 22, 2018, the Magistrate Judge issued a Report in each case recommending that the Motion for Leave to Proceed *in forma pauperis* be denied as Plaintiff had not satisfied the imminent danger exception to the three strikes rule of 28 U.S.C. § 1915(g). Plaintiff was served with the Report and Recommendations at his listed address of record and advised that written objections were due by November 8, 2018. On November 7, 2018, the Report and Recommendation was returned unopened to the Court with the following notation on the envelopes: “RTS. Temp. Release.” Upon inquiry, the Court was informed that Plaintiff had been transferred to Torrance State Hospital and was unable to file timely objections. On November 8, 2018, the Court sua sponte filed an Order granting Plaintiff an extension until December 10, 2018, to file written objections to the Report and Recommendation.

On December 4, 2018, the Court was informed that Plaintiff remained in custody at Torrance State Hospital. The cases were then statistically closed until such time as Plaintiff notified the Court of his return to Allegheny County Jail. On January 3, 2019, Plaintiff notified the Court that he had been returned to Allegheny County Jail. The cases were reopened and Plaintiff was granted an extension until January 24, 2019, to file his written objections. Presently before the Court are Plaintiff’s objections to the Report and Recommendations which were filed on February 5, 2019.<sup>1</sup>

The objections before the Court do not address the recommendation of the Magistrate Judge. Rather, the objections, in toto, state the following:

As of today 1-15-19 I am living with Gynemastic from Risperdal. that Gynemastic is a left breast and Karen Kizhandza violated by rights by leaving me 2 suffer. Cruel unusual punishment and deprivation placing me on the medication. I am indigent unable to pay any amount for moving fwd.

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<sup>1</sup> The objections appear to be dated January 15, 2019. The Court will give Plaintiff the benefit of the prison mail box rule and deem the objections timely filed.

How can you say being medical professionals, Risperdal manufacturer prescribed me this dangerous med. Risperdal to affect my body and the organs in my body - not appropriate then you left me on the medication with this side effect for over 2 years. Purposely having my body and health, which is cruel unusual punishment Leaving my health [undecipherable].

Its in my medical records I am allergic to Risperdal due to Gynemastic and my attorney Richard Narvin is a witness to my testimony. Richard Narvin, 429 Forbes Ave., Ste 1405 15219. [telephone number]

You placed me on Risperdal because I was young and black which is deprivation now as 1-15-19 I have a breast from Risperdal which is Gynemastic as professional you allowed them to give me Risperdal that affected my life and health by PA law not appropriate nor professional to do. almost has cause me death. not appropriate. Then as a company you give me the wrong medication and now I'm living with that gynemastic side effect from Risperdal against my right by PA law leaving me to rot suffer to death.

After a review of the pleadings and documents in these cases, together with the Report and Recommendations, and the objections thereto, the Court finds that the Magistrate Judge made a sound recommendation. Hoyer alleges that he was given Risperdal from May 2, 2018 until May 7, 2015, during his previous incarceration at the Allegheny County Jail. As the United States Court of Appeals for the Third Circuit has instructed, a plaintiff must allege facts showing that he was in imminent danger at the time the complaint was filed. *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir.), cert. denied, 533 U.S. 953 (2001). The following Order is entered:

The Motions for Leave to Proceed *in forma pauperis* are **DENIED**, and these actions are dismissed without prejudice to Plaintiff's right to reopen the cases by paying in each case the full statutory and administrative filing fees, totaling \$400.00. The Report and Recommendations

of the Magistrate Judge, dated October 22, 2018, hereby are **ADOPTED** as the Opinion of the District Court.

**IT IS SO ORDERED** this 8th day of February, 2019.

/s Nora Barry Fischer  
Nora Barry Fischer  
United States District Judge

cc: NATHAN R. HOYE  
167618  
Allegheny County Jail  
950 2nd Avenue  
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